(3)

No. 84-310

In the Supreme Court of the United States

OCTOBER TERM, 1984

In the Matter of:

Attorney Robert J. Snyder.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDINGS

Robert J. Snyder is a party to this proceeding. By letter dated October 19, 1984, the Office of the Clerk of the Supreme Court of the United States informed the U.S. Court of Appeals for the Eighth Circuit that the Supreme Court had requested that a response be filed to Mr. Snyder's petition for writ of certiorari.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Constitution, Statutes and Rules:

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The United States Court of Appeals for the Eighth Circuit respectfully opposes the Petition for Writ of Certiorari to review the opinions and judgment of the United States Court of Appeals for the Eighth Circuit entered in the above case on April 13, 1984, and May 31, 1984.

OPINIONS BELOW

Both opinions of the United States Court of Appeals for the Eighth Circuit are reported at 734 F.2d 334 (8th Cir. 1984).

See also Petition for Writ of Certiorari therein, p. 1. (Rule 34.2, Rules of the Supreme Court)

JURISDICTION

See Petition for Writ of Certiorari therein, p. 2. (Rule 34.2, Rules of the Supreme Court)

PROVISIONS OF CONSTITUTION, STATUTES AND RULES INVOLVED

In addition to the First and Fifth Amendments to the United States Constitution cited by petitioner (see Petition for Writ of Certiorari therein, p. 2), the United States Court of Appeals for the Eighth Circuit believes the following statutes and regulations are involved.

1. 18 U.S.C. §3006A(d)(1-4) (1982). (App. RA, *infra*, pp. A1-2.)

2. *Guidelines for the Administration of the Criminal Justice Act*, ch. 2, §3 (2.22, 2.27), Vol. VII, Guide to Judiciary Policies and Procedures. (App. RB, *infra*, pp. A3-8.)

STATEMENT OF THE CASE

Pursuant to Rules 22 and 34.2 of the Rules of the Supreme Court, this Statement of the Case is submitted to correct material omissions and inaccuracies in the Statement set forth in the Petition for Writ of Certiorari. It is uncontroverted that petitioner's claim for compensation and reimbursement submitted to Chief Judge Lay pursuant to 18 U.S.C. §3006A(d) of the Criminal Justice Act did not comply with the applicable guidelines. After failing twice to comply with the guidelines, petitioner wrote a letter dated October 6, 1983, which was addressed to the secretary of the District Court.[1] (App. C, A25.) Petitioner wrote this letter in response to Chief Judge Lay's request that he comply with the guidelines. On November 15, 1983, Chief Judge Lay wrote Judge Van Sickle and indicated, *inter alia*, that if Mr. Snyder wishes to write the Court and offer his apology to the Court for his disrespectful comments he would be willing to recommend to the Court that the Order to Show Cause not be filed. (App. RD, *infra*, pp. A10-11.) On December 12, 1983, Judge Van Sickle informed Chief Judge Lay that Mr. Snyder had decided not to apologize. (App. RE, *infra*, p. A12.) Subsequently, on December 22, an Order to Show Cause was filed. (App. E.)

Petitioner prepared a Return to the Order to Show Cause which was filed on January 16, 1984. (App. RF, *infra*, pp. A13-20.) Petitioner does not note in his Statement of the Case that he had acknowledged in his Return that the present proceeding was initiated by the letter of October 6, 1983, and that had the letter not been sent, this proceeding would not be taking place.

The hearing on the Order to Show Cause was held on February 16, 1984. Petitioner was given an opportunity at the hearing to apologize for his October 6 letter. He refused to do so and added, "if I'm suspended, I can tell you that the situation in Bismarck will become worse than it already is, because, I don't think you're going to find anybody that will take a case." (App. RG, *infra*, p. A24.) On February 24, 1984, Chief Judge Lay wrote petitioner giving him yet another opportunity to apologize. (App. RI, *infra*, pp. A27-28.) Petitioner responded on February 27 and indicated that he would never apologize, invited the Court to do whatever it felt it had to do, and intimated that he would accept the consequences of whatever the Court's action would be. (App. RJ, *infra*, pp. A29-30.)

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1. Petitioner had previously refused to verify his telephone expenses and refused to send an *hourly* breakdown of his time expended in the case. See Petitioner's letter of September 20, 1983. (App. RC, *infra*, p. A9.)

SUMMARY OF ARGUMENT

Petitioner was disciplined for his disrespectful failure to comply with the relevant guidelines for the judicial administration of the Criminal Justice Act. The Order to Show Cause filed December 22, 1983 (App. E), and Chief Judge Lay's letter of November 3, 1983 (App. D), placed petitioner on notice that the Eighth Circuit Court of Appeals was concerned about his course of conduct. Petitioner acknowledges this fact in his petition (Pet. 4) and in his Return to the Order to Show Cause. (App. RF, *infra*, p. A15.) In any event, the adamant refusal of petitioner to apologize renders any remand for hearing pointless.

Petitioner's claim that his First Amendment rights were violated is without merit. Petitioner's harsh and disrespectful remarks are an unmitigated attack on the legal system and the power of the judiciary to implement and administer the law. Lawyers, as officers of the Court, should demonstrate public confidence in and respect for the law and the legal system. Law could not long survive if officers of the Court engaged in this conduct.

ARGUMENT

REASONS FOR DENYING THE WRIT

I. THIS COURT SHOULD NOT GRANT CERTIORARI BECAUSE PETITIONER WAS AFFORDED DUE PROCESS OF LAW

The disciplinary procedures of all Circuit Courts of Appeals are embodied in rule 46(c) of the Federal Rules of Appellate Procedure. Rule 46(c) provides that a court of appeals may discipline an attorney for certain conduct after reasonable notice, opportunity to show cause to the contrary, and hearing, if requested.[2]

Petitioner does not address the issue of whether rule 46(c), F.R.App.P., is unconstitutional, as his first question for review contemplates, but instead proceeds from a totally different premise. Plaintiff cannot seriously contend that rule 46(c) is unconstitutional. As this Court has intimated, if notice is given and is reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and to afford them an opportunity to be heard, due process is achieved. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950). Rule 46(c) satisfies this constitutional dictate.

In contrast to the manner in which petitioner phrases his question for review, his argument is directed to

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2. The text of rule 46(c) is as follows:

Disciplinary Power of the Court over Attorneys. A court of appeals may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action against any attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with these rules or any rule of the court.

whether he in fact was afforded due process. Although this question is not technically presented for review, it also is without merit. The facts show that petitioner was afforded proper notice of the reasons for the proposed suspension and an opportunity to be heard on the specific charges. On November 3, 1983, Chief Judge Lay wrote Judge Van Sickle, with copy to the petitioner, concerning petitioner's letter of October 6 to the District Court's secretary. (App. D.) In that letter, Chief Judge Lay stated in pertinent part:

> *I consider Mr. Snyder's letter to your secretary as being totally disrespectful to the federal courts and to the judicial system. That demonstrates a total lack of respect for the legal process and the courts.*
>
> * * *
>
> Regardless of an attorney's view as to whether he feels obligated to provide pro bono work, *my concern now is related to the apparent refusal of the attorney involved in this case to comply with the Criminal Justice Act and the guidelines promulgated under it.*
>
> * * *
>
> [*I*]*n view of the letter that Mr. Snyder forwarded, I question whether he is worthy of practicing law in the federal courts on any matter. It is my intention to issue an order to show cause as to why he should not be suspended from practicing in any federal court in this circuit for a period of one year.* This suspension of course will apply to his appearance in federal court in North Dakota. We will, of course, give Mr. Snyder an opportunity to respond before any final determination is made.

[Emphasis added.]

On December 22, 1983, the Court filed an Order to Show Cause. (App. E.) The Order indicates that Mr. Snyder has refused to comply with the guidelines and forms required by the Criminal Justice Act for payment of attorneys' fees. The order further provides that in view of his refusal to *carry out his obligations as a practicing lawyer and as an officer of this Court,* he is ordered to show cause as to why he should not be suspended from practice in the Federal District Court, as well as in the United States Court of Appeals for the Eighth Circuit for such period of time as his refusal to serve continues. [Emphasis added.]

By virtue of the November 3, 1983, letter and the Order to Show Cause, petitioner clearly was put on notice that his letter of October 6 could form the basis for possible disciplinary action. How can petitioner, who expressed "extreme disgust" at his treatment by the Eighth Circuit and told the circuit to "take it or leave it," reasonably contend at this late date that he was surprised at the show cause hearing that the panel was concerned about his disrespectful comments in his October 6 letter? His "Return to Order to Show Cause" filed on January 16, 1984, confirms this beyond doubt. (App. RF, *infra,* p. A15.) Petitioner begins his "Argument" in that Return as follows: "The present proceeding was really initiated when the undersigned drafted and sent the letter of October 6, 1983. Had that letter not been sent, this proceeding would not be taking place." Petitioner's blatant and admittedly harsh remarks in that letter both questioned and criticized the Chief Judge's authority under the law to implement the provisions of the Criminal Justice Act. This was the very matter set forth in the Court's show cause order. Plaintiff concedes this fact on page four of the petition: "On December 22,

1983, the circuit court issued an [O]rder [T]o [S]how [C]ause why attorney Snyder should not be suspended from the practice of law in the federal courts for his refusal to offer service under the Criminal Justice Act *and to comply with the relevant guidelines.*" [Emphasis added.]

Petitioner's claim that he was deprived of due process by not being allowed to defend his conduct on First Amendment grounds simply ignores the basis of the Eighth Circuit's action. It is clear from the Order to Show Cause and the two opinions filed by the Eighth Circuit that petitioner was cited and disciplined for the disrespectful refusal to comply with the guidelines promulgated under the Criminal Justice Act. His refusal to comply, coupled with the language used, was an explicit statement of disrespect to the Federal Court. As such, Snyder impeded the orderly processing of attorneys' fee applications and the administration of justice.

Throughout his petition, petitioner has mischaracterized the basis of the Eighth Circuit's action against him. He claims that the October 6, 1983, letter was a private letter to a District Court Judge's secretary written at her suggestion about problems he had encountered in the representation of indigents (Pet. 12); that the letter was not within the court system (Pet. 13); and that the letter was a commentary upon the Criminal Justice Act and its perceived failings. (Pet. 13.) None of these characterizations is accurate. Petitioner's letter of October 6 came as a direct response to the Eighth Circuit's request that Snyder furnish more documentation and comply with the requirements of the Criminal Justice Act. Moreover, petitioner does not criticize the prudence of congressional legislation, but in quite disrespectful terms, impugns and questions the Chief Judge's authority and responsibility for administering the Criminal Justice Act.

It is undisputed that petitioner did not comply with the requirements of the Act on documenting his fees and expenses. Petitioner's response to the Eighth Circuit was: "You can take it or leave it." This simply is not a case where a citizen might express disrespectful defiance of the law, *cf. Cohen v. California,* 403 U.S. 15 (1968) but, rather, is a case where an officer of the Court has disrespectfully refused to comply with a congressional mandate and follow the law.

Further, the record shows that on four occasions the Eighth Circuit gave petitioner an opportunity to express his regret for his hasty conduct before acting to suspend him: 1) in Chief Judge Lay's letter of November 15, 1983 (App. RD, *infra,* pp. A10-11); 2) during the course of the show cause hearing (App. RG, *infra,* pp. A22-23); 3) at the close of the show cause hearing (App. RG, *infra,* p. A24); and 4) in Chief Judge Lay's letter of February 24, 1984. (App. RI, *infra,* pp. A27-28.) Petitioner elected not to do so. At no time did petitioner raise a procedural due process issue; request a further hearing on his purported First Amendment rights; or request that he be given time to retain counsel. He was and remains steadfast in his position that he is going to do nothing about his disrespectful refusal to comply with the guidelines promulgated under the Criminal Justice Act. Petitioner writes in his February 27 letter: "I cannot and will *never,* in justice to my conscience, apologize for what I consider to be telling the truth, albeit in harsh terms." (App. RJ, *infra,* p. A29.) [Emphasis added.] In view of petitioner's own position, his claims of procedural due process ring hollow. No material facts are at issue with respect to Mr. Snyder's conduct. In this particular setting, it would be an empty gesture to remand on due process grounds. *United States v. Lawson,* 600 F.2d 215, 218 (9th Cir. 1979).

The Eighth Circuit panel issued its opinion on April 13, 1984, suspending petitioner for six months. (App. A.) Petitioner requested the circuit to rehear the matter en banc. (App. F.) Thus, he was presented with another opportunity to present, in written form, any and all reasons relative to the purported justification for his conduct and to raise any legal issues he deemed pertinent. The circuit, although denying the petition for rehearing en banc, discussed petitioner's claim on the merits and, by a vote of seven to two, ruled against him. (App. B.) The circuit however, was willing to stay the panel's order for ten days pending further action from petitioner. Such response was not forthcoming and, it appears, will *never* be forthcoming.

Petitioner further argues that the Chief Judge of the Court of Appeals should have recused himself in a consideration of this matter because of the provisions of 28 U.S.C. §455 (Pet. 10), which state in pertinent part:

> Disqualification of justice, judge, or magistrate:
>
> (b) [A judge . . .] shall . . . disqualify himself in the following circumstances:
>
> (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed and evidentiary facts concerning the proceeding. . .

The petitioner argues only that the Chief Judge had personal knowledge of the facts concerning the proceedings. (Pet. 11.) The mere fact that a judge gains prior knowledge of facts concerning the matter before him is not, in and of itself, sufficient to require the judge to disqualify himself. *See United States v. Coven*, 662 F.2d 162, 168 (2nd Cir. 1981), *cert. denied*, 456 U.S. 916 (1982); *United States v. Patrick*, 542 F.2d 381, 390 (7th Cir. 1976), *cert. denied*, 430 U.S. 931 (1977). Furthermore, facts learned by a judge while acting in his judicial capacity can never be the basis for disqualification under 28 U.S.C. §455. *United States v. Patrick*, 542 F.2d at 390.

It is clear that under the statute, the personal knowledge of facts that disqualifies the judge must arise out of extrajudicial observation or misconduct. It is also clear from an examination of the allegations and argument of the petitioner that the Chief Judge's personal knowledge of facts, just like the other Circuit Judges' knowledge of the facts, was gained solely as judge in the matter before him.

II. PETITIONER'S RIGHT TO FREE SPEECH IS NOT INVOLVED

The second question is whether the disciplinary procedures of the Court of Appeals can constitutionally abrogate the First Amendment rights of attorney Robert J. Snyder. (Pet. I.) Once again, this question was not briefed by petitioner. This question appears to contemplate that rule 46(c) of the Federal Rules of Appellate Procedure is, on its face, constitutionally violative of petitioner's First Amendment rights. To state the proposition is to demonstrate its absurdity. Rule 46(c) is procedural; it does not attempt to regulate conduct or, in this instance, to regulate the content of speech. This second issue, as phrased, is simply devoid of merit.

What petitioner does argue in the body of his petition is that his First Amendment rights have been violated by the imposition of a six-month suspension. He states that in cases dealing with the subject of First Amendment rights, truthful criticism is subject to regulation only to

the extent that it presents a clear and imminent threat to the fair administration of justice or involves conduct disruptive of the judicial proceeding. For this proposition he cites three United States Supreme Court cases: *Craig v. Harney,* 331 U.S. 367 (1947); *Pennekamp v. Florida,* 328 U.S. 331 (1946); and *Bridges v. California,* 314 U.S. 252, 263 (1940). All three of these cases are inapposite. They involve the power of a court to punish a newspaper or a member of the press for contempt for out-of-court statements. They do not pertain to the power of a court to discipline attorneys who are officers of the Court.[3]

A majority of this Court has intimated that the clear and present danger test is not applicable to a court's inherent power to discipline officers of the court for contumacious conduct. *See In re Sawyer,* 360 U.S. 622 (1959). Federal Rule of Appellate Procedure 46(c) grants the authority to discipline an attorney for "conduct unbecoming a member of the Bar." Moreover, as a member of the North Dakota bar and as a licensed attorney in the Eighth Circuit, Snyder is bound by the ethical canons of the legal profession. The ABA Code of Professional Responsibility in force and effect in North Dakota provides in Disciplinary Rule (DR)1-102(A)(5) that a lawyer shall not engage in conduct that is prejudicial to the administration of jus-

3. *United States v. Grace,* 103 S.Ct. 1702 (1983) is likewise not on point. The *Grace* case involved a constitutional challenge to a federal statute prohibiting the display of any flag, banner or device designed or adopted to bring into public notice any party, organization, or movement in the United States Supreme Court building or on the grounds of the Supreme Court, which are defined to include public sidewalks. The Court held that the statute could not be applied to prohibit expressive activity on the sidewalks surrounding the Court grounds. *Id.* at 1708. The instant case does not involve a statute which is overbroad in application. Nor does this case, as petitioner would have this Court believe (Pet. 13), involve speech which is not directed to the Court. Petitioner's statements were a direct attack on the judiciary and its competence and authority to interpret and carry out an act of Congress.

tice. Further, Ethical Consideration (EC)9-6 from said Code outlines the attorney's duty to maintain proper respect for the Court as an institution.

> Every lawyer owes a solemn duty to uphold the integrity and honor of his profession; to encourage respect for the law and for the courts and the judges thereof; to observe the Code of Professional Responsibility; to act as a member of a learned profession, one dedicated to public service; to cooperate with his brother lawyers in supporting the organized bar through the devoting of his time, efforts and financial support as his professional standing and ability reasonably permit; to conduct himself so as to reflect credit on the legal profession and to inspire the confidence, respect, and trust of his clients and of the public; and to strive to avoid not only professional impropriety but also the appearance of impropriety.

It is one thing for a lawyer to complain factually to the court; it is another as petitioner did in this instance, to be disrespectful in doing so. *Paul v. Pleasants,* 553 F.2d 97 (4th Cir. 1977).[4] The majority of this Court in the case of *In re Sawyer,* 360 U.S. 622 (1959) agreed that a lawyer cannot invoke the constitutional right of free speech to immunize himself from even-handed discipline for unethical conduct. As Justice Stewart observed in that case:

> A lawyer belongs to a profession with inherited standards of propriety and honor which experience has shown necessary in a calling dedicated to the accomplishment of justice. He who would follow that calling must conform to those standards. *Obedience to ethi-*

4. Petitioner's claim that his criticism of the "puny" fees lawyers receive under the Criminal Justice Act is the basis of his suspension is not supported by the record. The two opinions of the Court of Appeals belie this argument.

cal precepts may require abstention from what in other circumstances might be constitutionally protected speech.

360 U.S. at 646-47. [Emphasis added.]

The Eighth Circuit's suspension of petitioner furthered important and substantial government interests of instilling public confidence in and respect for the law and maintaining the legitimacy of the judicial process. The limitation on petitioner's First Amendment freedoms was no greater than was necessary for the protection of that government interest. *See Procunier v. Martinez,* 416 U.S. 396, 413 (1974). The focus of petitioner's argument is that he can impugn the integrity and majesty of the law with impunity, or as he phrases it "without fear of reprisal." This argument is unprecedented. As an officer of the Court, an attorney is duty bound to show respect for the law. How can the citizenry be expected to have public confidence in the legal system if one of the officers of the Court states in no uncertain terms that he will not follow or obey the law? Notwithstanding petitioner's characterization of his speech, this matter simply does not concern the mere criticism of the wisdom of certain legislation. Petitioner's comments strike at the very heart of the viability of the law. By flaunting his disrespect for the law, petitioner has impeded the administration of justice in the case in which he was serving as counsel. By his remarks at the hearing on the Order to Show Cause and his veiled threat to the circuit that no one in Bismarck would follow the dictates of the Criminal Justice Act guidelines if he were suspended, petitioner has clearly impeded the administration of justice generally.

CONCLUSION

It is respectfully submitted that the petitioner has attempted to distort the basis upon which the disciplinary action was taken. The suspension was directly related to his disrespectful refusal to comply with the law. His suspension has nothing to do with his criticism of the Criminal Justice Act or the schedule of fees that Congress has provided therein. It is the Court's belief that every lawyer should show respect to the Court and to the laws of the United States. This requirement is implicit in a lawyer's duties and as an officer of the Court. Plaintiff does not and cannot dispute that he refused to comply with the Criminal Justice Act guidelines. By stating that he was disgusted with the treatment of him by the Eighth Circuit, that the Court could "take it or leave it," and that he had "had it up to here," petitioner has directly impeded the administration of justice and displayed public disrespect to the Court itself. All the Court asked him to do was to comply with the guidelines promulgated under the Criminal Justice Act. It seems incredulous that a lawyer can ask the highest Court in the land to support his right to be disrespectful and to disobey the law.

Respectfully submitted,

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Dated this 18 day of December, 1984.

APPENDIX RA

18 U.S.C. §3006A(d)(1-4) (1982) provides:

(*d*) *Payment for representation*

(*1*) *Hourly rate.*—Any attorney appointed pursuant to this section or a bar association or legal aid agency or community defender organization which has provided the appointed attorney shall, at the conclusion of the representation or any segment thereof, be compensated at a rate not exceeding $30 per hour for time expended in court or before a United States magistrate and $20 per hour for time reasonably expended out of court, or such other hourly rate, fixed by the Judicial Council of the Circuit, not to exceed the minimum hourly scale established by a bar association for similar services rendered in the district. Such attorney shall be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the United States magistrate or the court.

(*2*) *Maximum amounts.*—For representation of a defendant before the United States magistrate or the district court, or both, the compensation to be paid to an attorney or to a bar association or legal aid agency or community defender organization shall not exceed $1,000 for each attorney in a case in which one or more felonies are charged, and $400 for each attorney in a case in which only misdemeanors are charged. For representation of a defendant in an appellate court, the compensation to be paid to an attorney or to a bar association or legal aid agency or community defender organization shall not exceed $1,000 for each attorney in each court. For representation in connection with a post-trial motion made after the entry of judgment or in a probation revocation pro-

ceeding or for representation provided under subsection (g) the compensation shall not exceed $250 for each attorney in each proceeding in each court.

(3) *Waiving maximum amounts.*—Payment in excess of any maximum amount provided in paragraph (2) of this subsection may be made for extended or complex representation whenever the court in which the representation was rendered, or the United States magistrate if the representation was furnished exclusively before him, certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the chief judge of the circuit.

(4) *Filing claims.*—A separate claim for compensation and reimbursement shall be made to the district court for representation before the United States magistrate and the court, and to each appellate court before which the attorney represented the defendant. Each claim shall be supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the United States magistrate and the court, and the compensation and reimbursement applied for or received in the same case from any other source. The court shall fix the compensation and reimbursement to be paid to the attorney or to the bar association or legal aid agency or community defender organization which provided the appointed attorney. In cases where representation is furnished exclusively before a United States magistrate, the claim shall be submitted to him and he shall fix the compensation and reimbursement to be paid. In cases where representation is furnished other than before the United States magistrate, the district court, or an appellate court, claims shall be submitted to the District Court which shall fix the compensation and reimbursement to be paid.

APPENDIX RB

Pertinent Excerpts from *Guidelines for the Administration of the Criminal Justice Act,* Ch. 2 §3 (2.22, 2.27), Vol. VII, Guide to Judiciary Policies and Procedures

2.22 *Limitations.*

A. *Hourly Rates.* Counsel may be compensated at rates not exceeding $30 per hour for time expended in court or before a United States magistrate and $20 per hour for time reasonably expended out of court. The hourly rates of compensation are designated and intended to be maximum rates and to be treated as such. In each district court, counsel claiming in excess of $750 shall attach to the CJA voucher a memorandum detailing the services provided. The memorandum shall be in both narrative and statistical form and provide justification for hours spent. Whenever warranted by the circumstances of the case, counsel claiming less than $750 in a district court, and counsel claiming any amount in a court of appeals, may be required by the presiding judicial officer to submit a memorandum supporting and justifying the compensation claimed.

B. *Maximum Compensation.*

1. *Preliminary Proceedings and Proceedings Before a United States District Court.* Compensation (exclusive of allowable expenses) is limited to $1,000 for each attorney in a case in which one or more felonies are charged, to $400 for each attorney in a case in which only misdemeanors are charged in preliminary proceedings and proceedings before a United States district court, and to $250 for each attorney in connection with a post-trial mo-

tion made after entry of judgment, or in a probation or parole revocation or parole termination proceeding, or for representation as provided under Subsection (g). If a case is disposed of at an offense level lower than the offense originally charged, the compensation maximum is determined by the higher offense level. In capital cases or in other difficult cases in which the court finds it necessary to appoint more than one attorney, the limitations apply to each attorney. Payments in excess of these limitations may be made to provide fair compensation in cases involving extended or complex representation when so certified by a United States district judge or magistrate, as applicable, and approved by the Chief Judge of the United States Court of Appeals. The finding of the court that the appointment of an additional attorney in a difficult case was necessary and in the interest of justice shall appear on the Order of Appointment.

Counsel claiming payment in excess of the statutory maximum shall submit with his voucher a detailed memorandum supporting and justifying counsel's claim that the representation given was in an extended or complex case, and that the excess payment is necessary to provide fair compensation. Upon preliminary approval of such claim by the district court, the court should furnish to the chief judge of the circuit a memorandum containing his recommendations and a detailed statement of reasons.

In determining if an excess payment is warranted, the district court judge and the chief judge of the Circuit should make a threshold determination as to whether the case is either extended or complex. If the legal or factual issues in a case are unusual, thus requiring the expenditure of more time, skill and effort by the lawyer than would normally be required in an average case, the case is "complex". If more time is reasonably required for total pro-

cessing than the average case, including pre-trial and post-trial hearings, the case is "extended."

After establishing that a case is extended or complex, the approving judicial officer should determine if excess payment is necessary to provide fair compensation. The following criteria, among others, may be useful in this regard: responsibilities involved measured by the magnitude and importance of the case; manner in which duties were performed; knowledge, skill, efficiency, professionalism, and judgment required of and used by counsel; nature of counsel's practice and injury thereto; any extraordinary pressure of time or other factors under which services were rendered; and any other circumstances relevant and material to a determination of a fair and reasonable fee.

2. *Proceedings in Courts of Appeals.* The $1,000 limitation applies to the compensation payable for each attorney in an appellate court, including the district court on appeals from a magistrate's judgment. Appeals of post-trial motions, revocations of probation or parole, or other representation under Subsection (g) of the Act are subject to the $250 limitation for each attorney as provided in the last sentence of Subsection (d) (2) of the Act. Payment in excess of these limitations may be made to provide fair compensation in cases involving extended or complex representation when so certified by the court and approved by the Chief Judge of the Circuit.

C. *Reduction of CJA Compensation Vouchers by the Reviewing Judicial Officer.* The Criminal Justice Act provides that the reviewing judicial officer shall fix the compensation and reimbursement to be paid to appointed counsel. In cases where the amount approved is less than was requested by appointed counsel, the judicial officer may wish to notify appointed counsel that his or her claim

for compensation and/or reimbursement has been reduced, and to provide an explanation for the reasons for the reduction.

D. *Payments by a Defendant Under Subsection (f) of the Act.* No appointed attorney shall accept a payment from or on behalf of the person represented without authorization by a United States district or circuit judge or magistrate on CJA Form 7. If such payment is authorized, it shall be deducted from the fee to be approved by the court under Subsection (d) of the Act. In this regard, the combined payment to any one attorney for compensation from both the person represented and the Government shall be subject to applicable dollar limitations, unless excess compensation is approved under Subsection (d) (3) of the Act. Whenever the court finds that funds are available for payment from or on behalf of a person represented and directs that such funds be paid to the court for deposit in the Treasury, a check or money order drawn to the order of the Administrative Office of the United States Courts should be transmitted by the clerk of court to the Administrative Office together with completed CJA Form 7. The collections which are for deposit to the credit of the CJA appropriation will be processed by and included in the account of the Disbursing Officer of the Administrative Office. Subsection (f) of the Act does not authorize a judicial officer to require reimbursement as a condition of probation.

E. *Services Before United States Magistrates.* Magistrates may only approve vouchers for services rendered in connection with a case disposed of entirely before the magistrate.

2.27 *Reimbursable Out-of-Pocket Expenses.* Out-of-pocket expenses reasonably incurred may be claimed on the voucher, and must be itemized and reasonably documented. Expenses for investigations or other services under Subsection (e) of the Act shall not be considered out-of-pocket expenses.

A. *Reimbursement for Transcripts.* The cost of court authorized transcripts may be claimed as a reimbursable expense, as provided for in Subsection (d) (1) of the Criminal Justice Act (but see paragraph 3.12 of these Guidelines). Claims for reimbursement for payments for transcripts authorized by the court should be submitted on CJA Form 24. (See Appendix A) The cost of transcribing depositions in criminal cases is the responsibility of the Department of Justice pursuant to Rule 17b of Fed. R. Crim. P. (but when witness is an expert, then the Administrative Office will pay out of CJA funds) (39 Comp. Gen. 133 (1959)).

B. *Travel Expenses.* Travel by privately owned automobile should be claimed at the rate currently prescribed for Federal judiciary employees who use a private automobile for conduct of official business, plus parking fees, ferry fares, and bridge, road, and tunnel tolls. Transportation other than by privately owned automobile should be claimed on an actual expense basis.

Per diem in lieu of subsistence is not allowable, since the Act provides for reimbursement of expenses actually incurred. Therefore, counsel's expenses for meals and lodging incurred in the representation of the defendant would constitute reimbursable "out-of-pocket" expenses. In determining whether actual expenses incurred are "reasonable," counsel should be guided by the prevailing limitations placed upon travel and subsistence expenses of Federal judiciary employees in accordance with existing government travel regulations.

C. *Interim Reimbursement for Expenses.* Where it is considered necessary and appropriate in a specific case, the presiding judge or magistrate may, in consultation with the Administrative Office, arrange for interim reimbursement to counsel of extraordinary and substantial expenses incurred in providing representation in a case.

D. *Other.* This would include items such as telephone toll calls, telegrams, copying (except printing - see paragraph 2.28 D below) and photographs.

APPENDIX RC

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Attorneys at Law
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Gregory L. Bickle
James J. Coles
Robert J. Snyder

Telephone
(701) 258-1611

September 20, 1983

Helen Monteith
Clerk of Federal Court
Federal Building
3rd Street & Rosser Avenue
Bismarck, ND 58501

Re: Dennis Warren

Dear Ms. Monteith:

Enclosed with this letter you will find a copy of our billing records with regard to the above-entitled individual. These are all of the records which we have in our possession.

Thank you for your time and attention.

Very truly yours,

BICKLE, COLES AND SNYDER, CHARTERED
/s/ Robert J. Snyder
Robert J. Snyder
Attorney at Law

RJS/jft
enclosures

Helen – these are the charges for Warren but the amounts aren't exactly right due to our computer's lack of the right money codes ($20 $30/hr)
RJ

APPENDIX RD

UNITED STATES COURT OF APPEALS
Eighth Circuit

Donald P. Lay
Chief Judge
P. O. Box 30908
St. Paul, Minnesota 55175

November 15, 1983

The Hon. Bruce M. Van Sickle
United States District Judge
P. O. Box 670
Bismarck, North Dakota 58501

Re: Mr. Robert Snyder (C1-83-4-01. U.S.A. v. Dennis Warren).

Dear Judge Van Sickle:

Thank you for your letter of November 9 relative to the above CJA matter. I appreciate your comments.

At this point, I feel that if Mr. Snyder wishes to write the court offering his apology to the court for his disrespectful comments, and assuring the court that he will in the future be willing to comply with the requirements of the CJA and the guidelines, I will then be willing to recommend to the court that the order to show cause not be filed and, as a result, become public record.

Should Mr. Snyder not choose to honor this request, it will then become necessary for me to have the show cause

order issued. I would appreciate your contacting Mr. Snyder in this regard.

Best regards.

Sincerely,
/s/ Donald P. Lay
Donald P. Lay

/j

P.S. I am enclosing herewith the CJA20. I have approved a fee of $1,000, and expenses for copies of $23.25. I have deleted the sum of $43.60 for long distance calls because of Mr. Snyder's failure to comply with the request to identify the calls. DPL

APPENDIX RE

UNITED STATES DISTRICT COURT
District of North Dakota
P. O. Box 670
Bismarck, North Dakota 58501

Bruce M. Van Sickle
Judge

December 12, 1983

The Honorable Donald P. Lay
Chief Judge
United States Court of Appeals
for the Eighth Circuit
Box 30908
St. Paul, Minnesota 55175

Dear Judge Lay:

I have had the problem of Mr. Robert Snyder in my mind, of course, ever since your first letter, and I have held off responding because Mr. Snyder had a juvenile matter to which he had already been appointed when this problem arose.

I have had two conversations with Mr. Snyder. He sees his letter as an expression of an honest opinion, and an exercise of his right of freedom of speech. I, of course, see it as a youthful and exuberant expression of annoyance which has now risen to the level of a cause. The second conversation was late Friday after the dispositional hearing on the juvenile. And I believe Mrs. Monteith talked to him today.

He has decided not to apologize, although he assured me he did not intend the letter as you interpreted it.

Yours truly,

/s/ Bruce M. Van Sickle
Bruce M. Van Sickle

APPENDIX RF

(Filed January 16, 1984)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
Re: Robert J. Snyder

RETURN TO ORDER TO SHOW CAUSE

FACTS

The following is a history of the development of the present proceeding:

On March 14, 1983, the undersigned was appointed by the Federal District Court for the District of North Dakota, Southwestern Division, to represent, on an indigent basis, Dennis Warren, who was charged with approximately six counts relating to cocaine trafficking. The normal pre-trial work was performed, and a jury trial was held in Federal District Court, lasting one full week, May 2-6, 1983. Mr. Warren was convicted on all counts.

On August 9, 1983, the undersigned filled out and sent to the Clerk of the Federal District Court the standard federal claim for services and expenses. The total amount of the claim was $1,898.55. A copy of the claim voucher and cover letter are attached hereto.

On August 17, 1983, Judge Van Sickle reduced the claim by $102.50, approved it, and forwarded the claim to the Eighth Circuit. A copy of Judge Van Sickle's cover letter is attached hereto.

On September 6, 1983, the administrative personnel of the Eighth Circuit returned the claim voucher, requesting itemized support for the claim. A copy of that letter is attached hereto.

On September 20, 1983, the undersigned forwarded to Federal District Court in Bismarck a complete set of his firm's itemized computer sheets for all work performed on the Warren case. A copy of the computer sheets and the cover letter are attached hereto.

On September 26, 1983, the undersigned received from the administrative personnel of the Eighth Circuit another letter rejecting the claim voucher and itemized information, stating that the information was insufficient due to the fact that the computer sheets billed in dollars instead of hours, and, also, because phone records for the requested phone expenses were not attached.

On October 6, 1983, the undersigned sent an admittedly strident letter, responding to the letter of September 26, 1983. A copy of that letter is attached hereto.

On November 3, 1983, the undersigned received from Chief Justice Lay a letter taking offense to the undersigned's letter of October 6, 1983. A copy of that letter is attached hereto.

Subsequent to November 7, 1983, the undersigned was shown a letter from Chief Justice Lay to Judge Van Sickle, in which it was stated that the entire matter would be dropped if the undersigned apologized for the [sic] his letter of October 6, 1983. No response was made by the undersigned.

On December 20, 1983, Chief Justice Lay caused to be issued an Order to Show Cause, which forms the basis of the present proceeding. A copy of the Order to Show Cause is attached hereto.

The undersigned now makes and files a Return to the Order to Show Cause, showing why he should not be suspended from practice before the United States Court of Appeals for the Eighth Circuit, and the courts thereunder.

ARGUMENT

The present proceeding was really initiated when the undersigned drafted and sent the letter of October 6, 1983. Had that letter not been sent, this proceeding would not be taking place. The letter was admitedly harsh in tone, but reflected the frustration of the undersigned with the indigent criminal appointment process as employed by the Federal Courts. This frustration stems from a number of sources.

First, the rates paid by the Federal Courts for indigent appointment, despite allegations to the contrary, do not cover the overhead of the attorney so appointed. This is one of the main reasons why so few attorneys can be found in this area to accept the federal appointments, as will be discussed below.

Second, apart from the actual rates themselves, the procedures which must be followed to collect the indigent appointment fees are oppressive.

In this case, the undersigned made a good faith effort to provide all justification in his possession for the fees and expenses charged. The computer sheets, attached hereto, which were forwarded to the Eighth Circuit in response to the request, are extremely detailed, and contain virtually every item of work and expense performed on the case. They were, quite simply, everything we had in our possession to justify the fee, yet they were rejected.

In addition, the undersigned was required to produce him firm's phone records to justify $43.00 in phone call expenses. In the first place, to go back over several months' phone records for this firm and find the calls in question would be prohibitively time-consuming, more time than would justify providing documentation for a $43.00 expense.

Even more importantly, however, this firm considers its telephone records to be privileged information, and it does not allow the records to be indiscriminately sent out of the office.

In response to the letter of the undersigned of October 6, 1983, the undersigned received the letter from Chief Justice Lay, dated November 3, 1983. The undersigned was, quite honestly, shocked by both its content and unveiled threat. It is interesting to note that the letter of Chief Justice Lay does not overly concern itself with the request of the undersigned to be removed from the panel of the indigent defense counsel. In fact, in the letter the Chief Justice specifically approves the request.

Instead, the letter entirely directs itself to what apparently is perceived as something in the vein of contempt on the part of the undersigned in his letter of October 6 1983.

The undersigned wishes to state that he has nothing but the greatest respect for both the Federal Courts and the Federal Judiciary. However, the letter of October 6, does correctly state the deep feelings of the undersigned towards a process which is unfairly applied to a limited number of attorneys.

It is also interesting to note that had the undersigned simply apologized for the letter of October 6, 1983, apparently without withdrawing his request for removal from the panel of indigent defense attorneys, the present proceeding would not be taking place.

On December 20, 1983, Chief Justice Lay issued the Order to Show Cause, a copy of which is attached hereto, and to which this document is a response. Again the undersigned was shocked, because the ground for the Order

to Show Cause was the undersigned's request for removal from the panel of indigent defense attorneys, something the undersigned, in reviewing the letter of Chief Justice Lay, did not consider to be a matter of offense. However, since specific grounds are being used for the Order to Show Cause, a reply is necessary.

The defense of Dennis Warren was not the first case that the undersigned has undertaken on an indigent basis in Federal District Court in Bismarck.

The records of the Clerk of the Federal District Court in Bismarck show that in the four-year period from January 1, 1980, through December 31, 1983, there were 99 indigent federal appointments for the District of North Dakota, Southwestern Division. Of those 99 appointments, the undersigned received eight, and the other two members of his firm received an additional seven.

Of the eight cases received by the undersigned, three were tried to juries. For the eight cases, the undersigned spent a total of 100.75 hours in court, and 115.53 hours out of court.

The panel of indigent defense counsel for the District of North Dakota, Southwestern Division, a copy of which is attached hereto, contains 88 names. If a strictly rotational appointment system were used for this panel, in the four-year period mentioned above the undersigned should have received 1.12 cases, instead of eight.

However, the panel itself is glaringly deficient in a number of ways. First, the panel was last revised in August, 1980. Among the names on the panel are Burton L. Riskedahl, who has been Burleigh County Judge for a number of years; Maurice R. Hunke, who has been a State District Judge for a number of years; Rick D. Johnson, who has been Solicitor General of the State of North Dakota

for a number of years; Robert O. Wefald, who was elected Attorney General of the State of North Dakota in 1980; and John A. Zuger, Sr., who is deceased. One can imagine the number of attorneys who have established practice in Bismarck since August of 1980, who are eligible for the panel but not on it.

As significant as the names which appear upon the panel, are the names which do not appear upon it. The panel does not contain a large number of attorneys, some of them among the most prominent in the Bismarck-Mandan area. The reason for their absence is easily found.

Attached hereto is a copy of the "Plan Pursuant to the Criminal Justice Act of 1964, as amended, for the United States District Court, District of North Dakota." If one turns to page 2 of the plan, *II. Sources of Names,* one finds the procedure by which attorneys appear on the panel of indigent defense counsel. The pertinent portion reads as follows:

> The State Bar Association of North Dakota, acting by and through its appropriate committee, has recommended a list of attorneys who, in the opinion of such Bar Association, are competent to give adequate representation to parties under the Act, and who are willing to serve.

The critical passages above are "competent to give adequate representation" and "willing to serve." If an attorney does not deem himself competent to act as counsel in a criminal case, his name does not appear on the panel. Further, if an attorney is not willing to serve as indigent defense counsel, his name does not appear on the panel. Given the rates allowable for indigent defense representation, it is readily apparent why a large number of attorneys are simply unwilling to serve.

If one strictly follows the guidelines as set forth in the above-described plan, the undersigned is doing nothing more than express his unwillingness to serve, as have a number of other attorneys. How, then, can the undersigned be singled out for suspension from practicing before the Eighth Circuit and the courts thereunder?

The undersigned has read *Williamson v. Vardeman,* 674 F.2d 1211 (8th Cir. 1982), which is cited in the Order to Show Cause, and has no great argument with the case itself. However, it should be noted that *Williamson* imposes a burden and obligation not only upon individual attorneys, but upon the *legal profession* itself to provide counsel to indigent defendants without adequate compensation.

If *Williamson* is to be applied, it should be applied equally to all practitioners of the legal profession, and not to an extremely small segment thereof who are both "competent" and "willing to serve" as indigent defense counsel in federal cases. In practice, the obligation and burden of representing indigents for less than adequate compensation falls upon a very small number of criminal defense attorneys, among them the undersigned, and excludes the large majority of practicing attorneys. Such a system is not just if that small minority, including the undersigned, is compelled to accept federal appointments, and subsidize its brethren who will not or cannot do so.

If the undersigned is to be compelled to continue to represent indigent clients in federal cases, then the compulsion must extend to all attorneys who practice within the Southwestern Division of the District of North Dakota, regardless of their willingness or competence to serve. The plan referred to above must be revised, all nongovernmental attorneys placed thereon, and the panel be appointed on a strictly rotating basis.

To compel the undersigned to serve, without extending the compulsion generally, and to sanction the undersigned with suspension if he refuses, without sanctioning generally, is a taking of the undersigned's private property for public use without just compensation and a denial of due process of law, in violation of the Fifth Amendment to the United States Constitution.

Pursuant to Rule 46 of the Federal Rules of Appellate Procedure, the undersigned requests a hearing on this return before the full Court.

Dated this 12th day of January, 1984.

Respectfully submitted,

BICKLE, COLES AND SNYDER,
CHARTERED
219-1/2 East Broadway
P.O. Box 2071
Bismarck, North Dakota 58502-2071
/s/ Robert J. Snyder
By: Robert J. Snyder

APPENDIX RG

(Excerpts from)
Transcript of Proceedings

No. 84-8117 *In Re Attorney Robert J. Snyder*

CHIEF JUDGE LAY: Docket No. 84-8117 *In Re Attorney Robert J. Snyder*. I take it Mr. Snyder is in the courtroom?

MR. SNYDER: I am Robert Snyder your honor.

JUDGE LAY: Are you appearing pro se, or do you have someone representing you?

MR. SNYDER: I am appearing pro se, however, I have with me Mr. David Peterson who appears not as my counsel, but as a representative of the Burleigh County Bar Association, and he wishes the opportunity to address the courts as well.

JUDGE LAY: Well, we will determine whether that will be allowed. Do you wish to make a statement to the court?

MR. SNYDER: May it please the court, I believe that my position on this matter has been adequately stated in my return. I guess, just by way of emphasis, the specific grounds for the order to show cause on this suspension is my request to be removed from the panel of attorneys who will accept indigent appointments for the Southwestern Division of the District of North Dakota. In my return I attached a copy of the plan for the District of North Dakota, and in that plan the panel of attorneys is comprised of attorneys who are both competent and willing to serve. While I have, in my opinion, done nothing more than declare my unwillingness to appear on the panel any more. And I don't believe that I have done anything

untoward and I am in fact following the guidelines of the plan.

JUDGE LAY: You are following which guidelines?

* * *

[10] but, isn't it reasonable to ask you to say to what city the call was placed?

MR. SNYDER: Well, your honor, those—I wouldn't even have any independent recollection of that, because that's the way our computer keeps the time.

JUDGE ARNOLD: You don't keep files showing these on your paying clients?

MR. SNYDER: We bill our paying clients the same way.

JUDGE ARNOLD: They don't ask you: "Well, who did you call on April 20?"

MR. SNYDER: No.

JUDGE ARNOLD: All right. Well, let me go back to the other question I had, which is the letter of October 6. And, I guess, the letter seems somewhat troubled. (INAUDIBLE)

MR SNYDER: Possibly.

JUDGE ARNOLD: I am asking you, sir, if you are prepared to apologize to the court for the tone of your letter?

MR. SNYDER: That is not the basis that I am being brought forth before the court today. Is not an apology. And I could have apologized when an apology was demanded from Judge Lay, and I declined—

JUDGE LAY: Was requested.

MR. SNYDER: Was requested. Well, it was apologize or I will bring an order to show cause why you should not be suspended, so I guess I don't know if that's much of a request. But, I didn't apologize then, and I'm not apologizing [11] now, and, by the way, that letter was

not sent to the Eighth Circuit, it was sent to Helen Monteith.

JUDGE ARNOLD: All right. I just want to get this clear, that you are declining to apologize for the letter of October 6.

MR. SNYDER: I am.

JUDGE ARNOLD: All right, sir.

MR. SNYDER: But that's also not the basis of this proceeding. The basis—

JUDGE ARNOLD: It's the basis of another proceeding. Because you have a duty as a lawyer to behave yourself in a respectful fashion, just as the courts have a duty to try to understand the problems of bar and to behave with courtesy towards members of the bar. And I have to say, that I think you are failing in your duty.

MR. SNYDER: Will the court have any other questions?

JUDGE HEANEY: I have one question. And I would join in what Judge Arnold has to say, and would add that you appear to be to me a young man with spirit, and intelligence, and competence, and I believe if you could combine that with some humility and some concern for your obligations as a lawyer, you could be successful, but if you aren't, then, you probably won't wind up being a credit to your profession. Having said that, you raised an issue which probably doesn't concern this proceeding, but that is of interest to me, and that is, when it was determined that the defendant had money and had resources, did you go to Judge Van Sickle and

* * *

[15] MR. SNYDER: Your honor, I have talked to a lot of people about this present proceeding, and quite honestly, the reaction in Bismarck is that everyone is aghast at it. You've seen some of the correspondence that

I have submitted: the resolution by the Burleigh County Bar; the Affidavit from Judge Glaser; the letter from the State Bar Association. I solicited none of that. That was done on their own behest. And, if I'm suspended, I can tell you that the situation in Bismarck will become worse than it already is, because, I don't think you're going to find anybody that will take a case.

JUDGE LAY: Well then, maybe they all will be suspended from practice.

MR. SNYDER: Maybe.

JUDGE LAY: Well, I would—I think just administratively, I'll give you ten days, Mr. Snyder, if you wish to write a letter to the court and purge yourself of the concern of the court—all it is is a simple statement that you will take pro bono assignments of the federal courts and that you will comply with the guidelines if you are asked to do so. If you choose not to do that, then simply notify the court and then we'll take it upon ourselves to so act. I suggest that you counsel with someone before you write your letter in defiant or disrespectful terms.

MR. SNYDER: Your honor, as far as I would again emphasize that, according to the plan for the District of North Dakota, if I am not willing to serve, I need not serve, [16] and I need not give any reason according to that plan either.

JUDGE LAY: That isn't the plan of the Eighth Circuit.

MR. SNYDER: It is the plan of the District of North Dakota, the court in which I am appointed on these cases.

JUDGE ARNOLD: Let me say one other thing, Mr. Snyder, and that is, when you are thinking about whether to write any further letter, I would like you to consider also whether you might change your position with respect to the letter of October 6.

APPENDIX RH

(Received February 23, 1984)

BICKLE, COLES AND SNYDER, CHARTERED
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Robert J. Snyder

Telephone
(701) 258-1611

February 22, 1984

Clerk
United States Court of Appeals
For the Eighth Circuit
525 Federal Courts Building
316 North Robert Street
St. Paul, MN 55101

Re: Robert J. Snyder-Misc. 84-8017

Dear Sir:

In response to the oral demands made by the Court to the undersigned at the hearing on the Order to Show Cause, held in St. Paul on February 16, 1984, the undersigned responds as follows:

If and when a new Plan for the implementation of the Criminal Justice Act in the State of North Dakota is enacted, the undersigned will enthusiastically obey its mandates, just as he has obeyed the mandates, or lack thereof, in the existing Plan.

Further, the undersigned states that he will make every good faith effort possible to comply with the Court's guidelines regarding the payment of attorney's fees and expenses.

Thank you for your time and attention.

Very truly yours,

BICKLE, COLES AND SNYDER, CHARTERED
/s/ Robert J. Snyder
Robert J. Snyder
Attorney at Law

RJS/cjm

cc: Judge Van Sickle
Judge Benson
Dewey Kautzmann

APPENDIX RI

UNITED STATES COURT OF APPEALS
Eighth Circuit

Donald P. Lay
Chief Judge
P. O. Box 30908
St. Paul, Minnesota 55175

February 24, 1984

Mr. Robert J. Snyder
Bickle, Coles and Snyder
Attorneys at Law
P. O. Box 2071
Bismarck, North Dakota 58502-2071

Re: Order to Show Cause. Misc. No. 84-8017.

Dear Mr. Snyder:

The clerk has forwarded to me a copy of your letter you have written to the court indicating that you will continue to offer your services for pro bono representation under the Criminal Justice Plan.

The court expressed its opinion at the time of the oral hearing that interrelated with our concern and the issuance of the order to show cause was the disrespect that you displayed to the court by way of your letter addressed to Helen Montieth, Judge Van Sickle's secretary, of October 6, 1983. The court expressly asked if you would be willing to apologize for the tone of the letter and the disrespect displayed. You serve as an officer of the court and, as such, the Canons of Ethics require every lawyer to maintain a respect for the court as an institution.

Before circulating your letter of February 23, I would appreciate your response to Judge Arnold's specific request, and the court's request, for you to apologize for the letter that you wrote.

Please let me hear from you by return mail. I am confident that if such a letter is forthcoming that the court will dissolve the order.

Sincerely,

/s/ Donald P. Lay
Donald P. Lay

cc: Chief Judge Benson
Judge Van Sickle
Mr. Maland, Clerk's Office

APPENDIX RJ

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Robert J. Snyder

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February 27, 1984

Chief Justice Donald P. Lay
c/o Office of the Clerk
United States Court of Appeals
For the Eighth Circuit
525 Federal Courts Building
316 North Robert Street
St. Paul, MN 55101

Re: Robert J. Snyder-Misc. #84-8017

Dear Chief Justice Lay:

I am in receipt of your letter dated February 24, 1984. Please be advised that my letter of February 22, 1984, entirely states my position concerning this matter.

I cannot, and will never, in justice to my conscience, apologize for what I consider to be telling the truth, albeit in harsh terms. You must therefore search your conscience and determine what course of action will be serve the interests of justice and the administration of the Eighth Circuit.

It is unfortunate that the respective positions in the proceeding have so hardened. However, I consider this to be a matter of principle, and if one stands on a principle, one must be willing to accept the consequences.

Thank you for your time and attention.

Very truly yours,

Bickle, Coles and Snyder, Chartered
/s/ Robert J. Snyder
Robert J. Snyder
Attorney at Law

RJC/cjm

cc: Paul Benson
Bruce Van Sickle
Dwight C. H. Kautzmann